

MICV2004-00833

ERIC FARETRA

V.

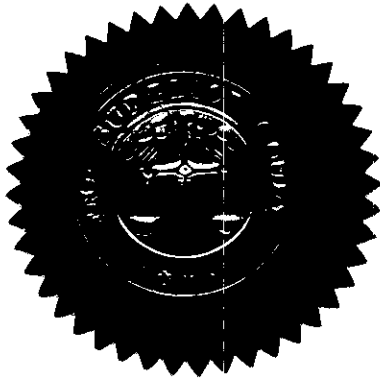
JOHN KEITH, ET AL

****REMOVED TO US DISTRICT COURT****

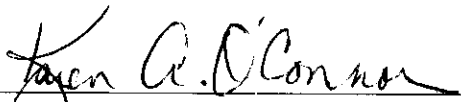
**Commonwealth of Massachusetts
SUPERIOR COURT DEPARTMENT
THE TRIAL COURT
CAMBRIDGE**

MICV 2004-00833

I, Karen O'Connor, Deputy Assistant Clerk of the Superior Court, within and for said County of Middlesex, do certify that the annexed papers are true copies made by photographic process of pleadings entered in the Superior Court on the 5th of March, in the year of our Lord, Two Thousand Four



In testimony whereof, I hereunto set my hand and affix the seal of said Superior Court, at Cambridge, in said County, this June 2nd, in the year of our Lord, Two Thousand Four


Deputy Assistant Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

ERIC FARETRA,

Plaintiff,

v.

JOHN KEITH and CHAMPS SPORTS
SHOPS OF MASSACHUSETTS, INC.,

Defendants.

FILED
CLERK'S OFFICE
2004 MAY 28 P 3:13
COPY
04 11133 MLW
U.S. DISTRICT COURT
DISTRICT OF MASS.

Case No.



NOTICE OF REMOVAL

Comes now real defendant in interest Armel, Inc.,¹ through counsel, and files this

Notice of Removal of the above-referenced state court case to this Court pursuant to 28 U.S.C. § 1441(a). In support of this notice, the Defendant respectfully states and shows the Court as follows:

1. On March 4, 2004, a Complaint was filed against CSSMI in the Superior Court for Middlesex County, State of Massachusetts, Case No. MICV2004-00833, entitled *Faretra v. Keith et al.* Armel's registered agent in Massachusetts, CT Corporation, received a copy of the Summons and Complaint on April 30, 2004.

2. This action is a matter over which this Court has original jurisdiction by virtue of 28 U.S.C. § 1332(a), and thus is one that may be removed to this Court by defendant under the provisions of 28 U.S.C. § 1441(a), in that it is a civil action between citizens of different states, and the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs.

¹ In his state-court Complaint, plaintiff sues Champs Sports Shops of Massachusetts, Inc. In fact, as set forth in the accompanying Affidavit of Sheilagh M. Clarke, Champs Sports Shops of Massachusetts, Inc. ("CSSMI") no longer exists as a corporation. It was dissolved in or around December 1990.

a. The plaintiff is and was at the time of filing his Complaint a resident and citizen of the State of Massachusetts. *See* Complaint at ¶ 1. Armel, the real party in interest, is incorporated in the State of Florida and has its principal place of business in the State of New York. Based upon plaintiff's Complaint, it is reasonably probable that the other purported defendant in this matter, John Keith, is also not a citizen of Massachusetts – plaintiff identifies him in the Complaint as a “fugitive from justice whose whereabouts are unknown.” *See* Complaint at ¶ 2. In addition, Mr. Keith has not been served with process and, in light of his unknown whereabouts and fugitive status, is unlikely to ever become a party to this action. Thus, there is complete diversity of citizenship between the real parties in this suit.

b. Plaintiff asserts a claim of negligence against defendant. Plaintiff alleges that he has “incurred severe personal and emotional injuries” and that he “was caused to suffer great pain of body and anguish of mind, his earning capacity was and will be impaired, and he has expended and will continue to expend large sums of money for medical care and attendance.” *See* Complaint at ¶¶ 10, 11. Defendant believes that there is no factual basis for plaintiff's claims and that plaintiff is not entitled to recover damages. However, plaintiff clearly requests relief, as alleged in his Complaint, that satisfies the jurisdictional minimum as it is reasonably probable, based on plaintiff's Complaint, that if plaintiff prevailed on his claims he would seek an award in excess of \$75,000.

c. This Notice of Removal is being timely filed pursuant to 28 U.S.C. §1446(b).

3. Defendant has attached to this Notice of Removal as **Collective Exhibit A**, a copy of all process, pleadings, and orders it has received in the state court action, as required by 28 U.S.C. § 1446(a).

4. Attached as **Exhibit B** is the Affidavit of Sheilagh M. Clarke, describing the relationship between Armel and CSSMI.

5. Venue is proper in this district and division pursuant to 28 U.S.C. § 1441(a) because this district and division embrace the place in which the removed action is pending.

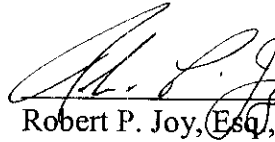
6. A Notice of Removal is being filed simultaneously with the State Court and provided to all parties as required by 28 U.S.C. § 1446(d). A copy of such Notice is attached as **Exhibit C**.

WHEREFORE, defendant prays that this case be removed from the Superior Court for Middlesex County, Massachusetts, and proceed in the United States District Court for the District of Massachusetts, at Boston, as an action properly removed thereto.

Respectfully submitted,

MORGAN BROWN & JOY, LLP

By:



Robert P. Joy, Esq., BBO #254820

One Boston Place
Boston, Massachusetts 02108-4472
Telephone: (617) 523-6666
Facsimile: (617) 367-3125

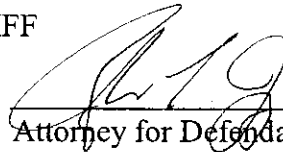
ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on Plaintiff's counsel, via United States mail, this 28th day of May, 2004, using the following contact information:

Darin M. Colucci, Esq.
COLUCCI, COLUCCI & MARCUS, P.C.
552 Adams Street
Milton, Massachusetts 02186

ATTORNEY FOR PLAINTIFF



Attorney for Plaintiff

7
COMMONWEALTH OF MASSACHUSETTS
MIDDLESEX COUNTY SUPERIOR COURT

ERIC FARETRA,

Plaintiff,

v.

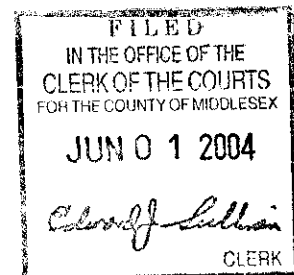
JOHN KEITH and CHAMPS SPORTS
SHOPS OF MASSACHUSETTS, INC.,

Defendants.

Case No. MICV2004-00833

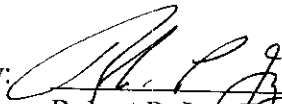
NOTICE OF FILING OF NOTICE OF REMOVAL

Comes now real defendant, through counsel, and hereby gives notice that this case has been removed to the United States District Court for the District of Massachusetts, and that the State Court shall proceed no further in this case. Attached is a copy of a Notice of Removal which has been filed this same day in federal district court.



Respectfully submitted,

MORGAN BROWN & JOY, LLP

By: 
Robert P. Joy, Esq., BBO #254820

One Boston Place
Boston, Massachusetts 02108-4472
Telephone: (617) 523-6666
Facsimile: (617) 367-3125

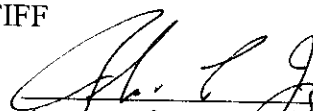
ATTORNEYS FOR DEFENDANT

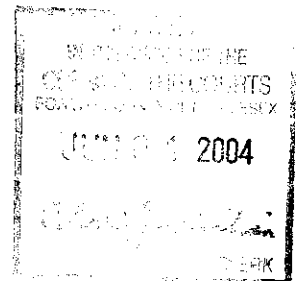
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on Plaintiff's counsel, via United States mail, this 28th day of May, 2004, using the following contact information:

Darin M. Colucci, Esq.
COLUCCI, COLUCCI & MARCUS, P.C.
552 Adams Street
Milton, Massachusetts 02186

ATTORNEY FOR PLAINTIFF


Attorney for Defendant



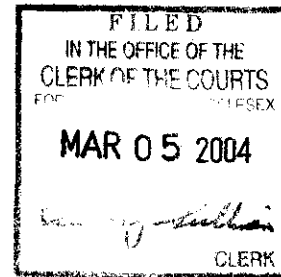
COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO.:

04- 833

Eric Faretra,)
Plaintiff)
)
v.)
)
John Keith and Champs Sport Shops)
of Massachusetts, Inc.)
Defendant)



COMPLAINT AND JURY DEMAND

THE PARTIES

1. The plaintiff, Eric Faretra, resides at 12 Bailey Street in Somerville, County of Middlesex, Commonwealth of Massachusetts.
2. The defendant, John Keith, is currently a fugitive from justice whose whereabouts are unknown.
3. The defendant, Champs Sport Shops of Massachusetts, Inc. d/b/a FootLocker, is a Massachusetts Corporation with an usual place of business of 3 Fanueil Hall Marketplace, City of Boston, County of Suffolk, Commonwealth of Massachusetts.

THE FACTS

4. At all material times hereto, the defendant, John Keith, was an employee of the defendant, Champs Sport Shops of Massachusetts, Inc. (hereinafter FootLocker).
5. At all material times hereto, the defendant, John Keith, held a supervisory/managerial position with the defendant, FootLocker.
6. At no time prior to hiring Mr. Keith or at any time during his employment, did FootLocker undertake to investigate and or screen in anyway, Mr. Keith's background.
7. In or around September of the year 2000, the defendant, John Keith, as a

03/05/04 11:56#0000 3993 CLERK E
CIVIL 240.00
SURCHARGE 15.00
SUMMONS 15.00
SECC 20.00
040833 #
SUBTTL 290.00
TOTAL 290.00
DECKS 290.00

representative and/or agent of FootLocker, hired seventeen year old Eric Faretra. At all material times hereto, the defendant, John Keith, remained Mr. Faretra's direct supervisor.

8. During Mr. Faretra's tenure as a FootLocker employee, he was routinely subjected to physical and sexual abuse at the hands of his direct supervisor, the defendant, John Keith. These lewd, uncivilized and reprehensible acts were performed at the FootLocker store where he worked in Burlington, Massachusetts.
9. After enduring months of this horrendous sexual abuse, Eric Faretra finally confided in family members that he was being abused by his supervisor at FootLocker. Mr. Faretra's family ultimately contacted the authorities and Mr. Keith was brought up on charges for his conduct which remain pending in Middlesex Superior Court.
10. As a result of Mr. Keith's horrendous acts and as a result of the carelessness and negligence of the defendant, FootLocker in failing to perform a background check and or monitor its employees' conduct, the plaintiff, Eric Faretra, has incurred severe personal and emotional injuries.
11. As a result of the personal and emotional injuries sustained as aforesaid, the plaintiff, Eric Faretra, was caused to suffer great pain of body and anguish of mind, his earning capacity was and will be impaired, and he has expended and will continue to expend large sums of money for medical care and attendance.

CAUSES OF ACTION

(The Causes of Action specifically incorporate by reference all of those paragraphs previously set forth)

FIRST CAUSE OF ACTION

12. This is an action by the plaintiff, Eric Faretra, against the defendant, John Keith, for sexual abuse resulting in personal and emotional injuries.

SECOND CAUSE OF ACTION

13. This an action by the plaintiff, Eric Faretra, against the defendant, John Keith, for sexual battery resulting in personal injuries.

THIRD CAUSE OF ACTION

**COLUCCI,
COLUCCI &
MARCUS, P.C.**

552 Adams Street
Milton, Massachusetts 02186
Telephone: (617) 698-6000
Facsimile: (617) 698-1262

14. This is an action by the plaintiff, Eric Faretra, against the defendant, John Keith, for rape resulting in a personal and emotional injuries.

FOURTH CAUSE OF ACTION

15. This is an action by the plaintiff, Eric Faretra, against the defendant, John Keith, for the negligent infliction of emotional distress.

FIFTH CAUSE OF ACTION

16. This is an action by the plaintiff, Eric Faretra, against the defendant, FootLocker, for negligence resulting in personal injuries.

DEMANDS FOR RELIEF

17. The plaintiff, Eric Faretra, demands judgement against the defendant, John Keith, with interest and costs as to the first cause of action.
18. The plaintiff, Eric Faretra, demands judgement against the defendant, John Keith, with interest and costs as to the second cause of action.
19. The plaintiff, Eric Faretra, demands judgement against the defendant, John Keith, with interest and costs as to the third cause of action.
20. The plaintiff, Eric Faretra, demands judgement against the defendant, John Keith, with interest and costs as to the fourth cause of action.
21. The plaintiff, Eric Faretra, demands judgement against the defendant, FootLocker, with interests and costs as to the fifth cause of action.

JURY CLAIM

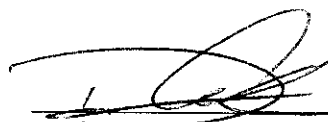
22. The Plaintiff claims a trial by jury.

Respectfully submitted,

For the Plaintiff,

By his Attorneys,

COLUCCI, COLUCCI & MARCUS, P.C



Darin M. Colucci
BBO#563232
552 Adams Street
Milton, MA 02186
(617) 698-6000

Dated: March 4, 2004

**CIVIL ACTION
COVER SHEET****04- 833****Trial Court of Massachusetts
Superior Court Department**County: Middlesex

PLAINTIFF(S)

Eric Faretra

DEFENDANT(S)

John Keith and Champs Sport Shops of
Massachusetts, Inc.ATTORNEY, FIRM NAME, ADDRESS AND TELEPHONE (617) 698-6000
Darin M. Colucci
Colucci, Colucci & Marcus, P.C. 552 Adams St.
Board of Bar Overseers number: 563232 Milton, MA 02186

ATTORNEY (if known)

Unknown

Origin code and track designation

Place an x in one box only:

- | | |
|---|---|
| <input checked="" type="checkbox"/> 1. F01 Original Complaint | <input type="checkbox"/> 4. F04 District Court Appeal c.231, s. 97 & 104 (After trial) (X) |
| <input type="checkbox"/> 2. F02 Removal to Sup.Ct. C.231,s.104 (Before trial) (F) | <input type="checkbox"/> 5. F05 Reactivated after rescript; relief from judgment/Order (Mass.R.Civ.P. 60) (X) |
| <input type="checkbox"/> 3. F03 Retransfer to Sup.Ct. C.231,s.102C (X) | <input type="checkbox"/> 6. E10 Summary Process Appeal (X) |

TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)

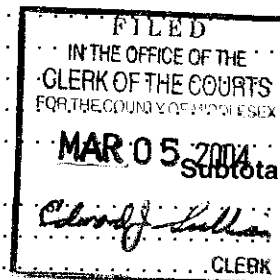
CODE NO.	TYPE OF ACTION (specify)	TRACK	IS THIS A JURY CASE?
<u>B 99</u>	<u>Sexual molestation/ Rape (F)</u>		(X) Yes () No

The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.**TORT CLAIMS**

(Attach additional sheets as necessary)

A. Documented medical expenses to date:

- | | |
|--|----------|
| 1. Total hospital expenses | \$ |
| 2. Total Doctor expenses | \$ |
| 3. Total chiropractic expenses | \$ |
| 4. Total physical therapy expenses | \$ |
| 5. Total other expenses (describe) | \$ |



- | | |
|--|----------|
| B. Documented lost wages and compensation to date | \$ |
| C. Documented property damages to date | \$ |
| D. Reasonably anticipated future medical and hospital expenses | \$ |
| E. Reasonably anticipated lost wages | \$ |
| F. Other documented items of damages (describe) | \$ |

G. Brief description of plaintiff's injury, including nature and extent of injury (describe)

The plaintiff was repeatedly raped by the defendant while he was an employee at FootLocker. The plaintiff was caused to suffer severe emotional and personal injuries and is currently seeking medical treatment for these injuries.

TOTAL \$undetermined. at
this time

CONTRACT CLAIMS

(Attach additional sheets as necessary)

Provide a detailed description of claim(s):

TOTAL \$

PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT

"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."

Signature of Attorney of Record

DATE: 3/4/04

Commonwealth of Massachusetts
MIDDLESEX SUPERIOR COURT
Case Summary
Civil Docket

MICV2004-00833
Faretra v Keith et al

File Date	03/05/2004	Status	Disposed: transfered to other court (dtrans)
Status Date	06/01/2004	Session	H - Cv H (8A Cambridge)
Origin	1	Case Type	B99 - Misc tort
Lead Case		Track	F

Service	06/03/2004	Answer	08/02/2004	Rule 12/19/20	08/02/2004
Rule 15	08/02/2004	Discovery	12/30/2004	Rule 56	01/29/2005
Final PTC	02/28/2005	Disposition	04/29/2005	Jury Trial	Yes

PARTIES

Plaintiff
Eric Faretra
12 Bailey Street
Active 03/05/2004

Private Counsel 563232

Darin M Colucci
Colucci & Colucci
552 Adams Street
Milton, MA 02186
Phone: 617-698-6000
Fax: 617-698-1262
Active 03/05/2004 Notify

Defendant
John Keith
Service pending 03/05/2004

Defendant
Champa Sport Shops Of Massachusetts, Inc.
3 Fanueil Hall Marketplace
Served: 04/30/2004
Answered: 05/20/2004
Answered 05/20/2004

Private Counsel 254820

Robert P Joy
Morgan Brown & Joy
1 Boston Place
Suite 1616
Boston, MA 02108-4472
Phone: 617-523-6666
Fax: 617-367-3125
Active 05/20/2004 Notify

Other interested party
Armel, Inc
Active 06/01/2004

*** See Attorney Information Above ***

ENTRIES

Date	Paper	Text
03/05/2004	1.0	Complaint & civil action cover sheet filed
03/05/2004		Origin 1, Type B99, Track F.

Commonwealth of Massachusetts
MIDDLESEX SUPERIOR COURT
Case Summary
Civil Docket

MICV2004-00833
Faretra v Keith et al

Date	Paper	Text
04/02/2004	2.0	Plaintiffs' Request for order of notice as to defendant JOHN KEITH (publication)
04/27/2004		After review of the papers, motion (P#2) DENIED without prejudice. Rule 4(d)(1) requires a showing that the process server make return, that he is unable to serve the defendant "after diligent search." No such showing has been made (Brassard, J.) notice mailed May 3, 2004
05/12/2004	3.0	SERVICE RETURNED: Champa Sport Shops Of Massachusetts, Inc.(Defendant) 04/30/04 in hd, c/o CT Corporation Systems, 101 Federal St., Boston, MA
05/20/2004	4.0	ANSWER: Champa Sport Shops Of Massachusetts, Inc.(Defendant)
05/24/2004	5.0	Plaintiff Eric Faretra's MOTION for appointment of special process server Timothy McGonigal, DHR and Associates. Allowed by the Court, Locke, J.
05/27/2004	6.0	Plaintiff Eric Faretra's MOTION to Extend Time for Service of Process on John Keith an additional 90 days.
06/01/2004	7.0	Case REMOVED this date to US District Court of Massachusetts by defendant-in-interest Armel, Inc
06/01/2004		ABOVE ACTION THIS DAY REMOVED TO US DISTRICT COURT

